means'' to which the court referred—i.e., by a less restrictive means than the Loudoun County library used. The draft bill would be implemented by a means that would permit the blocking software to be turned off when an adult is using the terminal. The court in the Loudoun County case did not find that this less restrictive means ''would necessarily be constitutional if implemented,'' but it did not rule out the possibility.

Under the draft bill, whether computers were programmed to block URLs that are known to display child pornography and obscenity, or were programmed to block particular material, on all sites, that constitutes child pornography or obscenity, they would apparently, of necessity, block some material that constitutes neither child pornography nor obscenity. If, however, the former method of blocking were used—i.e., the method of blocking URLs that you ask us to assume would be used—then there would be a Supreme Court precedent that would suggest that the draft bill would be constitutional even if it resulted in the blocking of some material that constitutes neither child pornography nor obscenity. This precedent is Ginsberg v. New York.[7]

In Ginsberg, the Court upheld a New York State ''harmful to minors'' statute, which is similar to such statutes in many states. This statute prohibited the sale to minors of material that—

(i) predominantly appeals to the prurient . . . interest of minors, and (ii) is patently offensive to prevailing standards in the adult community . . . with respect to what is suitable material for minors, and (iii) is utterly without redeeming social importance for minors.[8]

The material that this statute prohibited being sold to minors were what the Court referred to as '''girlie' picture magazines.''[9] It seems unlikely that such magazines were all literally ''utterly without redeeming social importance for minors,'' as some of the magazines that the statute probably prohibited from being sold to minors probably had at least one article concerning a matter of at least slight social importance for minors. Yet this possible objection to the statute was not raised by the Court's opinion or even by the concurring or two dissenting opinions to Ginsberg.

Furthermore, the draft bill's prohibition would be less restrictive than the New York statute's, as the draft bill's prohibition would be limited to obscenity and child pornography. The Supreme Court has defined ''obscenity'' by the Miller test, which asks:

(a) whether the ''average person applying contemporary community standards'' would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[10]

The Miller test parallels the New York statute's description of material that is harmful to minors, but, in two respects, it covers less material than does the New York statute. First, to be obscene under the Miller test, material must be prurient and patently offensive as to the community as a whole, not merely as to minors. Second, to be obscene under the Miller test, material must, taken as a whole, lack serious value, but need not be utterly without redeeming social importance for minors.

As for child pornography, it did not exist as a legal concept (i.e., as a category of speech not protected by the First Amendment) when Ginsberg was decided. The Supreme Court, however, has defined it so that it is immaterial whether it has serious value.[11] Therefore, the draft bill, in this respect, may be viewed as covering less material than laws against child pornography, as well as less material than laws against obscenity. As Ginsberg upheld a statute prohibiting the sale to minors of material that goes beyond obscenity and child pornography, and as the draft bill would be limited to those two categories, it appears that, based on the Ginsberg precedent, the draft bill, if implemented by blocking URLs known to contain obscenity or child pornography, would be constitutional.

FOOTNOTES

[1] Miller v. California, 413 U.S. 15 (1973) (obscenity); New York v. Ferber, 458 U.S. 747 (1982) (child pornography).

[2] Sable Communications of California v. Federal Communications Commission, 492 U.S. 115, 126 (1989).

[3] Mainstream Loudoun v. Board of Trustees of the Loudoun County Library, 24 F. Supp.2d 552 (E.D. Va. 1998). On April 19, 1999, the defendant decided not to appeal this decision.

[4] Id. at 556.

[5] Id. at 567.

[6] Id.

[7] 390 U.S. 629 (1968).

[8] Id. at 633.

[9] Id. at 634.

[10] Miller v. California, supra note 1, at 24.

[11] New York v. Ferber, supra note 1, at 763–764.

HOUSE JOINT RESOLUTION 99–1037

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 20, 1999

Mr. SCHAFFER. Mr. Speaker, Colorado is a national leader in the efforts to protect public health and the integrity of our environment. My state's devotion to high standards is coupled to its desire to maintain the economic prosperity and the excellent quality of life all Coloradans enjoy.

In fact, Colorado has found ways to achieve both objectives due to the brilliance of her citizenry and facility of the state legislature. In particular, I commend the exemplary leadership of Colorado State Representative Jack Taylor, and State Senator Ken Chlouber, in challenging those federal actions which molest Colorado's ability to achieve its enviable balance of environmental health and economic liberty.

This year, the pair persuaded members of their respective houses to join in elevating Colorado's grievances to a national level. As one whose voice speaks for Colorado, I urge my colleagues tonight to lend careful consideration to Colorado's position on the matter of its relationship to the federal regulatory structure.

A resolution adopted by the Colorado General Assembly (HJR 99–1037) was forwarded to the Congress urging our intervention and initiative in this important matter. The content of the Resolution is worthy of review here and now.

Mr. Speaker, protection of public health and the environment is among the highest priority of government requiring a united and uniform effort at all levels. The United States Congress has enacted environmental laws to protect the health of the citizens of the United States. These federal environmental laws often delegate the primacy of their administration and enforcement to individual states.

Mr. Speaker, the United States Environmental Protection Agency (EPA) is responsible for the administration and enforcement of these federal environmental laws. The states that have been delegated primacy have demonstrated to the EPA that they have adopted laws, regulations, and policies at least as stringent as federal standards. These individual states are best able to administer and enforce environmental laws for the benefit of all citizens of the United States.

Accordingly, the EPA and the states have bilaterally developed policy agreements over the past twenty-five years that reflect the roles of the states and the EPA. These agreements also recognize the primary responsibility for enforcement action resides with the individual states, with EPA taking enforcement action principally where an individual state requests assistance, or is unwilling or unable to take timely and appropriate enforcement action.

However, inconsistent with these policy agreements, the EPA has levied fines and penalties against regulated entities in cases where the state previously took appropriate action consistent with the agreements to bring such entities into compliance. For example, Colorado statutes give authority to the appropriate state agencies for the administration and enforcement of state and federal environmental laws, but the EPA continues to enforce federal environmental laws despite the state's primacy and has acted in areas of violations where the state has already acted.

The EPA has been unwilling to recognize the importance of Colorado's ability to develop methods for the state to meet the standards established by the EPA and federal environmental laws while recognizing state and local concerns unique to Colorado. Mr. Speaker, a cooperative effort between the states and the EPA is clearly essential to ensure such consistency, while making certain to consider state and local concerns.

The EPA has been hesitant to recognize that economic incentives and rewarding compliance are acceptable alternatives to acting only after violations have occurred.

Currently, the EPA's enforcement practices and policies result in detailed oversight, and overfiling of state actions causing a weakening of the states' ability to take effective compliance actions and resolve environmental issues. The EPA's redundant enforcement policy and actions have adversely impacted its working relationships with Colorado and many western states.

In response to the EPA, the Western Governors' Association has adopted ''Principles for Environmental Protection of the West,'' which encourages collaboration and polarization between the EPA and the states, and further encourages the replacement of the EPA's command-and-control structure with economic incentives encouraging results and environmental decisions that weigh costs against benefits in taking actions.

Mr. Speaker, Congress must require the EPA to recognize the states have the requisite authority, expertise, experience, and resources to administer delegated federal environmental programs. The EPA should afford states flexibility and deference in the administration and enforcement of delegated federal environmental programs.

EPA enforcers should also refrain from over-filing against recognized violators when a state has negotiated a compliance action in accordance with its approved EPA management systems so that compliance action achieves compliance with applicable requirements. The EPA should allow states the ability

to develop plans for achieving national environmental standards established by the EPA which are tailored to meet local conditions and priorities.

Moreover, the EPA should enter into memoranda of understanding with individual states outlining performance, firm joint goals, and measures to ensure compliance with federal environmental laws while recognizing states that having achieved primacy in environmental programs have the right to direct compliance actions.

Further, Mr. Speaker, I call upon Congress to direct the EPA to develop policies and practices which recognize successful environmental policy and implementation are best achieved through balanced, open, inclusive approaches where the public and private stakeholders work together to formulate locally-based solutions to environmental issues. In addition, threats of enforcement action to coerce compliance with specific technology or processes often do not result in environmental protection but rather encourage delay and litigation, and are disincentives to technological innovation, increasing animosity between government, industry and the public, and raising the cost of environment protection.

Finally, effective management of environmental compliance is dependent upon the EPA shifting its focus from threats of enforcement action to one of compliance and the use of all available technologies, tools, and actions of the individual states.

AMERICAN EMBASSY SECURITY ACT OF 1999

SPEECH OF

HON. ROBIN HAYES

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Monday, July 19, 1999

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2415) to enhance security of United States missions and personnel overseas, to authorize appropriations for the Department of State for fiscal year 2000, and for other purposes.

Mr. HAYES. Mr. Chairman, there have long been concerns regarding the funding of the United Nations Population Fund and its family planning practices around the world. From 1986 to 1992, UNFPA received no United States funds because of its presence in China, where coercive population practices have been reported. In 1993, this administration let these family planning practices off the hook and funding was restored. Until the UNFPA provides concrete assurances that it was not engaged in, or does not provide funding for, abortions or coercive family planning programs. I can not support this additional funding to the UNFPA.

Intense pressure to meet family planning targets set by the Chinese government has resulted in documented instances of officials using coercion, including forced abortion and sterilization, to meet government population goals.

The family practices employed by the Chinese government are alarming. Poll after poll reveals that a significant portion of Americans believe abortion is morally wrong, and even more Americans would agree that federal tax dollars should not be used to fund abortions. This loophole in funding must be closed for the safety of unsuspecting mothers who are given little choice.

I am adamantly opposed to any commitment of federal funds for the purpose of abortion services in the United States or abroad. I also oppose the deceptive actions of the United Nations family planning agencies that use their UN funding to pay the electric bill while diverting ''private funds'' to pay for their forceful family planning practices. How can I go back to my district and tell my constituents I don't have the resources to help protect our neighborhoods or for after school programs for our students, because we have to sent our federal dollars to the United Nations to perform abortions?

I cannot support funding for the United Nations Population Fund until there are assurances and documented evidence that United States federal funds do not fund abortions half way around the world. I ask my colleagues to support the Smith-Barcia Amendment and to vote no on the Campbell-Gilman amendment.

HONORING DAVID ANDERSON

HON. LOIS CAPPS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 20, 1999

Mrs. CAPPS. Mr. Speaker, today I rise to bring to the attention of my colleagues a friend and a leader who was recently honored by the Land Trust of Santa Barbara County for years of outstanding commitment to our environment—David Anderson. David has dedicated himself to the preservation of land in Santa Barbara County and the Central Coast.

David Anderson is the co-founder and past President of the Land Trust. He has been intimately involved in almost every conservation effort the Trust has worked on in the last fifteen years. David has been a constant source of support to community groups, property owners and government agencies in Santa Barbara county where the preservation of land was at stake. Because of his efforts and leadership, open space has been preserved on the Gaviota Coast, coastal bluffs have been preserved near Point Sal, the Great Oak Preserve in the Santa Ynez Valley was established, and grasslands near Lompoc have been conserved. These are but a few examples of the land that David and the Trust have secured for today and in perpetuity.

David has also greatly contributed to other community organizations. He has served as Past President and is currently the Co-Executive Director of the Santa Barbara Museum of Natural History, he has been a Board member of the Nature Conservancy, and President of Get Oil Out. In addition, he has been the Past Chairman of the County Air Pollution Hearing Board and a City of Santa Barbara Planning Commissioner.

Mr. Speaker, I was honored to join the Land Trust for Santa Barbara County this past weekend to pay tribute to David Anderson. He is a man who has dedicated himself to creating and preserving our most precious resources—our land and our environment. I commend him for years of service to the County of Santa Barbara and to our nation.

PERSONAL EXPLANATION

HON. VITO FOSSELLA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 20, 1999

Mr. FOSSELLA. Mr. Speaker, I am not recorded on rollcall numbers 308 for the Lewis and Clark Expedition Bicentennial Commemorative Coin Act; 309 for the Sense of Congress Regarding the U.S. in the Cold war and the Fall of the Berlin Wall; and 310 for the Iran Nuclear Proliferation Prevention Act. I was unavoidably detained and therefore, could not vote for this legislation. Had I been present, I would have voted ''aye'' for all of the above resolutions.

HONORING FIRST AMERICAN TITLE COMPANY

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 20, 1999

Mr. RADANOVICH. Mr. Speaker, I rise today to recognize First American Title Company for devoting themselves to the improvement and development of the City of Clovis, California. Through many activities and events, First American Title Company has devoted countless hours to the development and enhancement of the County of Fresno, specifically the City of Clovis.

One of America's oldest and largest real estate related financial services companies celebrated its centennial in 1989. The First American Financial Corporation traces its roots back to 1889 when what was then rural Orange County, California, split off from the County of Los Angeles. At that time, title matters in the brand-new county were handled by two firms—the Orange County Abstract Company and the Santa Ana Abstract Company. In 1894, C.E. Parker, a local businessman, succeeded in merging the two competitors into a single entity, the Orange County Title Company, the immediate predecessor of today's First American Title Insurance Company.

Later, the company took a new name, First American, and expanded the geographic scope of its operations. In 1968, the firm was restructured into a general holding company, The First American Financial Corporation, conducting its title operations through First American Title Insurance Company and its subsidiaries. Existing title and abstract companies were purchased, new offices were established, and agency contacts were negotiated. Through a well-planned and managed expansion program, First American built an organization that serves every region of the country.

The Company operates through a network of more than 300 offices and 4,000 agents in each of the 50 states. It provides title services abroad in Australia, the Bahamas, Canada, Guam, Mexico, Puerto Rico, the U.S. Virgin Islands, and the United Kingdom.

First American's business practices are a blend of the newest techniques and technologies with the old, tried and true ways of providing personal service. The critical ingredient in the company's formula for success is people.